

## BOARD OF SELECTMEN – WORK SESSION – SEPTEMBER 27, 2006

### I. Call or Order/Roll Call

Chairman Alex J. Vispoli called the Work Session to order at 7:30 P.M. in the Selectmen's conference room at the Town Offices. Present were: Chairman Vispoli and Selectmen Brian P. Major and Ted E. Teichert. Also present were Town Manager Reginald S. Stapczynski, Police Chief Brian J. Pattullo, School Committee Chairman Tony James and member Richard Collins, Town Counsel Thomas J. Urbelis and residents Jon Stumpf and Eugenie Moffitt on behalf of St. Augustine's School. The meeting was duly posted.

### II. Opening Ceremonies

Chairman Vispoli called for a Moment of Silence followed by the Pledge of Allegiance.

### III. Discussion of St. Augustine School's Crossing Guard Issue

Chairman Vispoli began by outlining the format for the meeting and said since it was a Work Session comments would not be received from those in the audience. He said the Work Session was an attempt by the Selectmen to bring the interested parties together in an effort to come to an amicable solution regarding the School Committee's elimination of the St. Augustine School's crossing guards. He said he felt it was important as a Town to work out issues and, in this case, children are involved so the Board's concern is their safety. He said when reviewing whether there was a precedent or best practice used in other towns it was learned that every town handles crossing guards differently.

School Committee member Dick Collins said in reviewing the Budget over the years, the School Committee did not know they had been paying for the School's crossing guards. The Budget simply says "crossing guards" and there had never been a discussion about it. Police Chief Pattullo reminded those in attendance that the item was brought up by Selectman Hess at a budget meeting, the item is listed in both the School Department's Recommended and Approved Budget as "private crossing guards", lists the number of crossing guards, shifts and their locations. School Committee Chairman Tony James noted that in past years they have not seen the level of detail in the Budget that is now provided by new Business Manager Evan Katz.

Jon Stumpf addressed the group and agreed that during the Budget process cuts needed to be made and everything was looked at. He complimented Business Manager Evan Katz for the added information contained in the School Department's Budget and said as a Finance Committee member it had been very beneficial during the Budget process. He said contrary to that however, if changes are made they need to be looked at to see if there is protocol in communicating those changes so that everyone is informed and provided with an opportunity to give feedback. He cited the Mass. Department of Education guidelines for transportation which specifically state that cities and towns' policies need to be clearly stated so that parents, teachers, administrators and students are all clear on what they are and that they are clearly disseminated and understood/known by all. He again complimented Mr. Katz on the job he did with the Budget and saving the Town money but thinks this one line

### III. Discussion of St. Augustine School's Crossing Guard Issue (Cont.)

item should have been openly communicated as it involved the safety of the Town's children. He noted that the Selectmen's mission statement contains the wording "to protect the safety of the people" and felt everyone would agree that safety is critical. He said unfortunately that

element of the decision was not really thought out during the Budget meeting debates leading up to Town Meeting.

Eugenie Moffitt assured School Committee Chairman James and Member Collins that people do trust that the School Committee's decision was not a malicious one and felt it was important to clear up that misconception. She said people were emotional because the decision involves children and their safety. As a parent and resident, she feels it is a public safety issue and in reviewing the Superintendent's Approved Budget, the definition of transportation is clearly stated as "this account covers the contractual expenses for regular and special needs transportation and also includes the salaries and office expenses of the Transportation Coordinator and the crossing guards." She said during the Work Session she would appreciate clarification of the definition and when it had changed.

Chairman Vispoli thanked Mr. James for obtaining an opinion from the school's Attorney Stonberg regarding this issue. He said it had been reviewed by Town Counsel Thomas Urbelis who had also provided an opinion. Attorney Urbelis' opinion, which also addresses his differences with Attorney Stonberg's opinion, was distributed to those in attendance.

Chairman Vispoli reviewed the sequence of events leading up to the decision to cut the crossing guards and the process used each year by the Selectmen, Finance Committee and School Committee in reviewing the School Department's Budget. He said the Selectmen submit a series of questions prior to the meeting which then gives the School Department an opportunity to analyze them and provide answers at the Budget meetings. In the context of those questions, Selectman Hess asked what things are mandated and whether there were items that are not mandated which could be eliminated.

Mr. James provided a detailed explanation as to what led to the decision to eliminate the crossing guards. He said it began with the question raised by Selectman Hess as to whether crossing guards at private schools were required. Mr. Katz provided Selectman Hess with a response in late February that bus transportation services for K – 12 students living in the school district and attending private schools was required under the same terms as those provided to students in public schools. He reminded the group that in the last four years, the School Committee has been applying bus fees to students in grades 7-12 in both public and private schools. Subsequent research, with the assistance of the School Department's attorney, indicated they were not required to fund or provide crossing guards to private schools. As a result of this information, the School Committee decided to eliminate the funding in the Budget for the St. Augustine School crossing guards. He said their attorney views transportation and crossing guards under State law as different items.

Mr. James went on to explain that the Committee recognized the impact such a decision would have so they asked Mr. Katz to personally visit the School's Principal and

### III. Discussion of St. Augustine School's Crossing Guard Issue (Cont.)

explain the decision which was done on March 29, 2005. Following his meeting, Mr. Katz e-mailed the School Committee, Superintendent and Police Chief and indicated that the Principal, although she regretted the decision, understood it. Mr. James said they didn't hear anything from the School until the end of June when the Principal called Transportation Coordinator Mim McLaughlin to tell her she was leaving and to thank her for all of the work she had done on their behalf. At that time, Ms. McLaughlin reminded Ms. Moran the crossing guard issue needed attention. Mr. James indicated that Mr. Katz also spoke with Principal Moran before she left with the same reminder. He said as far as the School Committee was concerned, they

had discussed the issue, visited with the Principal and an article had appeared in the *Eagle Tribune* on April 3<sup>rd</sup> indicating the funding for the St. Augustine's crossing guards was being eliminated in the FY-07 Budget. It was their assumption that the School had been properly informed of their decision. He said they hadn't heard anything from them for five months, they were very surprised when several St. Augustine's parents appeared at a meeting in September to complain about the decision.

Mr. James said everyone is concerned about the safety of children, however, the issue at this time is not whether there should be crossing guards at the St. Augustine School – it's how they are funded.

Chairman Vispoli asked Mr. James to finish his timeline of events and would then like Town Counsel Urbelis to address the group concerning his opinion letter. Mr. James said he took exception to Mr. Urbelis being invited to the meeting – had he known he would be in attendance he would have invited Ms. Stonberg. He suggested that the attorneys argue their differences off-line to which Mr. Vispoli agreed, however, added that he would like Mr. Urbelis to address the group at some point in the meeting.

Ms. Moffitt asked Mr. James for clarification of Attorney Stonberg's statement that there was no mandate to provide a crossing guard for a private school and asked whether she also stated that there is no mandate to provide a crossing guard for public schools. Mr. James responded in the affirmative and confirmed that the issue of crossing guards is considered a discretionary item.

Mr. James went to say that the School Committee regrets the issue has come to this juncture, however, feels the Administration and School Committee communicated their decision effectively to the appropriate person. He said if there were issues to be debated, then it should have been done sometime in March, April or, at the very least, before the end of the school year. In closing, he said it is clearly indicated in their Budget that the St. Augustine's crossing guard position was removed.

Mr. Stumpf inquired how long the crossing guard has been provided at the Central Street location to which Chief Pattullo responded it has been over ten years. He wondered whether it was fair to assume that this was a change to which Mr. James responded they didn't eliminate the crossing guard – they eliminated the funding. Mr. Stumpf asked whether the School Committee's decision was ever submitted in writing to St. Augustine's. Mr. James

### III. Discussion of St. Augustine School's Crossing Guard Issue (Cont.)

responded it was not as they felt it was better to personally speak to the Principal. He noted that in hindsight they should have done both.

Chief Pattullo said he, Mr. Katz and Safety Officer Cronin had numerous conversations regarding the provision of crossing guards and the Police Department had also done research for him concerning State requirements for crossing guards. He confirmed he received Mr. Katz's e-mail after his meeting with the School Principal. He said Mr. Katz had informed the Principal that his office would be willing to continue to handle the scheduling of their crossing guards, however, re-iterated they didn't have the funds to pay for the position and felt this was possibly where the breakdown in communication had occurred. He said when Officer Cronin and Ms. McLaughlin met prior to the opening of school to schedule the crossing guards and go over their locations, it became apparent that St. Augustine's had not requested anyone.

Chairman Vispoli assured everyone in attendance that nobody is disputing the existence of Mr. Katz's e-mail and that has never been an issue.

Mr. Collins addressed the group and said this has been a tough decision for him as he joined the St. Augustine parish in 1959 and all of his five children had gone to St. Augustine School. He said he has been involved in Andover athletics and the School Department for many years and has received several inquiries from residents as to how the Town can give money to a private school when they are charging public school students for just about everything they do. He cited specific costs for participation in programs and felt it was a valid argument. On the other hand, parents of St. Augustine School students are Andover taxpayers and deserve attention. Mr. Vispoli agreed and said he has received the same types of questions from residents which was why the group was attempting to address the issue.

Chairman Vispoli then asked Town Counsel to summarize his opinion on the issue. Mr. Urbelis said he had reviewed Ms. Stonberg's opinion and she had come up with two conclusions. The first was that there is no legal obligation for the School Department to supply crossing guards. He said, in the abstract, he doesn't have any dispute with that. The second is whether there is a legal obligation to provide safe transportation from the bus dropoff to the school entrance. She concludes "in my judgment the term transportation does not encompass a requirement to utilize school crossing guards at certain crosswalks". He said, in the abstract, he didn't have any dispute with that, however, she did cite Massachusetts Law in her opinion – he felt Chapter 76, Section 1 should have been included and was not. He reviewed Section 1 with the group particularly what he felt was applicable in this case that "pupils who attend approved private schools of elementary and high school grades shall be entitled to the same rights and privileges as to transportation to and from school as are provided by law for students of public schools." He said the law has been interpreted in several court cases and the Legislature intended to make available private school transportation to the same extent as the School Committee, within its statutory powers, makes transportation available to children in public schools.

### III. Discussion of St. Augustine School's Crossing Guard Issue (Cont.)

Mr. Urbelis said the law was not intended to tell the Committee what it can be made to do, the requirement imposed is that there be no discrimination against private school students in what the Committee, in its discretion, decides to do. He said it was his view that once the School Committee decides to provide transportation to a public school student then by Chapter 76, Section 1, not cited in Ms. Stonberg's decision, the Committee cannot discriminate against private school students if they provide a certain level or form of transportation to public school students. The Committee is then required by State law to provide the same form and level to similarly situated private school students.

Mr. Urbelis then addressed the second point of whether there is a legal obligation to provide safe transportation from the school bus dropoff to the school entrance. He said he felt that issue has been answered by both the State law and Department of Education. He again cited wording from Chapter 76, Section 1 and said the law was passed by the Legislature "in order to protect children from the hazards of traffic and to promote their safety." He noted there is reference to this law in the Commissioner of Education's transmittal letter contained in the Department of Education transportation bulletin and guide which is distributed to all School Committees throughout the State in which he states, "On numerous occasions School Committees and the general public have requested information concerning pupil transportation services. This manual is intended to aid staff and local education agencies in providing safe pupil

transportation.” Mr. Urbelis said he felt it was clear by both the Legislature and the Department of Education that if transportation is provided it must be safe transportation.

Mr. Urbelis went on to discuss Ms. Stonberg’s opinion of whether crossing guards are necessary to provide safe transportation. He cited an example in the abstract to support his difference of her opinion. He said the references cited in both the law and the Department of Education bulletin clearly indicates that crossing guards are necessary for safe transportation. He stated further that as a matter of practice, crossing guards have been a line item in the School Department’s transportation budget so they must consider it part of transportation. He said this reinforces the point that if transportation is provided to public school students then there cannot be any discrimination in providing the equivalent to private school students. He further stated that it was the judgment of the School Department and Police Department to determine the location of the crossing guards for students to access the school. He closed his remarks by saying the difference between his opinion and Attorney Stonberg’s is that you cannot discriminate in providing crossing guards to public school students and not to private school students.

Mr. Collins said he personally thinks crossing guards should be provided for the protection of the children, however, the issue is where will the funding come from in the School Department’s Budget. Mr. Teichert said he felt the budget issue needed to be resolved and suggested that possibly all three groups – the Town, School Department and St. Augustine’s School – could each contribute a determined amount to address the problem this year and then the issue could be discussed further for next year and future years.

### III. Discussion of St. Augustine School’s Crossing Guard Issue (Cont.)

Mr. Stumpf said he felt the Town could find the \$11,000 to solve the problem this fiscal year which should be the main focus of the discussion. He outlined his concerns from a liability standpoint should the crossing guards not be provided and noted that statistics show the Central Street/Chestnut Street intersection is the busiest intersection in Town.

Mr. James again re-iterated his feelings that the bottom line regarding the issue is the difference of opinion between the Town and the School attorneys and that those differences need to be worked out. A lengthy discussion ensued regarding these differences, the definition of transportation in the School Department’s Budget and the Town’s policy for transportation.

In response to a concern raised by Ms. Moffitt about the overall safety of the children, Mr. James asked why someone hasn’t hired a crossing guard to make sure the children are safe and to argue about the funding later. Mr. Stumpf responded that the School has addressed the public safety concern by having someone act as the crossing guard at the crosswalk every day since school began.

The question was raised as to what authority the present volunteer crossing guards have in regard to traffic on Central Street. Chief Pattullo said any volunteer or crossing guard does not have the authority to direct motor vehicular traffic. Motor vehicles are required to yield to any pedestrian who has entered a crosswalk – crossing guards only reinforce the pedestrian aspect of those crossing the street and motor vehicle traffic cannot proceed until the crosswalk is clear.

The group then discussed funding options. Chief Pattullo offered the suggestion that since funding for crossing guards falls under the School Department’s Budget and should they

agree to provide the crossing guards for St. Augustine's, if that account is overspent at the end of the year, then a transfer could be requested from the Finance Committee to cover the deficit. He pointed out that the school year has already begun so the amount needed to fund the position will be less than the \$11,000 originally discussed and felt whatever deficit existed at the end of the year would support a valid Reserve Fund transfer request. The group agreed this was a viable option.

Selectman Major said he felt it was important that the two attorneys work out their differences of opinion concerning this issue and come to a mutual agreement soon. He said how we treat the safety of the students in the community should not be tied to a monetary issue or an issue of private vs. public. He said the funding to address this matter is not a one-year issue – it's a long-term issue of where future funding will come from. Chief Pattullo reminded everyone that the important issue is to get a crossing guard at the School now and the other issues should be addressed later.

The criteria used for the placement of crossing guards, how other private schools in Town address this issue and the use of the Senior Tax Voucher Program was discussed.

### III. Discussion of St. Augustine School's Crossing Guard Issue (Cont.)

Mr. James indicated the School Committee was not willing at this time to change the decision they made concerning the crossing guards. Ms. Moffitt discussed the need for the School Department to establish transportation goals and policy so that they would have something to base their decisions on should situations such as this arise in the future. Chief Pattullo said he felt addressing this issue now was establishing policy and once the attorneys reach a decision concerning their opinions then the decision for the funding of crossing guards next year will have been made.

The group then engaged in a lengthy discussion concerning the merits of the two options presented that evening – to split the cost between the three groups (Selectmen, School Committee and St. Augustine's) or to fund the crossing guards through the School Department Budget (Account 330) and at the end of the fiscal year should there be a deficit in this account, then a transfer in that amount would be requested from the Reserve Fund to cover the deficit.

The following language addressed in option two was crafted by Mr. James: "that there would an agreement from both the Selectmen and the Finance Committee that if the School Committee agrees to provide crossing guards to St. Augustine's School and if at the end of the fiscal year that account (330) exceeds the budgeted amount, we have an agreement up front that it will be taken care of through a transfer." It was agreed that the crossing guard budget would be monitored separate from all others and if there was a deficit that can be tracked due to the additional \$10,000 or \$11,000 spent for the St. Augustine's crossing guards, then the School Committee would go to the Finance Committee for a transfer with the support of the Selectmen. It was noted that the transfer request would have to be from the School Committee as the deficit would be in their budget. The group agreed on the proposed language which will then be brought back to their respective boards for a vote. The Town Manager was asked to distribute the language to the respective committees/boards.

The schedule for future meetings was discussed. Chairman Vispoli suggested that the School Committee, Selectmen and Finance Committee all meet sometime during the next week to vote on the proposed language. It was also suggested that the three Boards meet at 6:00 P.M. prior to the Regular Selectmen's meeting on Tuesday, October 10<sup>th</sup> at the Public Safety Center.

IV. Adjournment

A motion was made by Selectman Major, seconded by Selectman Teichert, to adjourn the meeting. The vote was unanimous. The meeting adjourned at 9:12 P.M.

Respectfully submitted,

*Sandra A. Cassano*  
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Recording Secretary